

WAJDA LAW GROUP, APC

Nicholas M. Wajda (State Bar No. 259178)

6167 Bristol Parkway

Suite 200

Culver City, California 90230

Telephone: 310-997-0471

Facsimile: 866-286-8433

E-Mail: nick@wajdalawgroup.com

Attorney for the Plaintiff

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DORIS HALL,

Plaintiff,

v.

OLIPHANT FINANCIAL, LLC,

Defendant.

Case No.

COMPLAINT FOR DAMAGES

**1. VIOLATION OF THE FAIR DEBT
COLLECTION PRACTICES ACT, 15 U.S.C.
§1692 ET SEQ.**

**2. VIOLATION OF THE ROSENTHAL FAIR
DEBT COLLECTION PRACTICES ACT,
CAL. CIV. CODE §1788 ET SEQ.**

DEMAND FOR JURY TRIAL

COMPLAINT

NOW comes DORIS HALL (“Plaintiff”), by and through her attorneys, WAJDA LAW GROUP, APC (“Wajda”), complaining as to the conduct of OLIPHANT FINANCIAL, LLC (“Defendant”), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages pursuant to the Fair Debt Collection Practices Act (“FDCPA”) under 15 U.S.C. §1692 *et seq.*, and the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”) pursuant to Cal. Civ. Code §1788 *et seq.*, for Defendant’s unlawful conduct.

JURISDICTION AND VENUE

2. This action arises under and is brought pursuant to the FDCPA. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C §1692, 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for the state law claim pursuant to 28 U.S.C. §1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business in the Eastern District of California and a substantial portion the events or omissions giving rise to the claims occurred within the Eastern District of California.

PARTIES

4. Plaintiff is a consumer over-the-age of 18 residing in Fresno County, California, which is located within the Eastern District of California.

5. Defendant promotes itself as “a fully licensed collection agency[.]”¹ Defendant is a limited liability company organized under the laws of the State of Florida and its principal place of business located at 1800 2nd St., Suite 603, Sarasota, Florida 34236. Defendant regularly collects from consumers in the State of California.

6. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all times relevant to the instant action.

FACTS SUPPORTING CAUSES OF ACTION

7. The instant action arises out of Defendant's attempts to collect upon a defaulted consumer debt ("subject debt") that Plaintiff purportedly owed. Plaintiff incurred the subject debt primarily for personal and/or household purposes.

8. Several months ago, Plaintiff, an elderly woman, was diagnosed with lung cancer, which severely affected her life.

¹ <https://www.oliphantfinancial.com/Services>

1 9. In conjunction with Plaintiff's medical struggles, Plaintiff has also suffered through
2 financial hardship.

3 10. As a result of Plaintiff's medical and financial problems, Plaintiff hired an attorney in order
4 to pursue her rights as a consumer and debtor.

5 11. Thereafter, around the winter of 2019, Defendant telephonically contacted Plaintiff in
6 order to collect upon the subject debt.

7 12. Upon speaking with Defendant, Plaintiff was informed that Defendant is a debt collector
8 seeking to collect upon the subject debt.

9 13. Plaintiff provided Defendant with her attorney's contact information and demanded that it
10 contact her attorney instead.

11 14. Yet, Defendant refused to abide by Plaintiff's demands and continued placing collection
12 calls to Plaintiff's phone.

13 15. Defendant's actions frustrated Plaintiff's goal in seeking an attorney to enforce her rights
14 as a consumer and debtor.

15 16. Frustrated over Defendant's conduct, Plaintiff spoke with Wajda regarding her rights,
16 resulting in expenses.

17 17. Plaintiff has been unfairly and unnecessarily harassed by Defendant's actions.

18 18. Plaintiff has suffered concrete harm as a result of Defendant's actions, including but not
19 limited to, invasion of privacy, aggravation, and emotional distress.

20 **COUNT I – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

21 19. Plaintiff repeats and realleges paragraphs 1 through 18 as though full set forth herein.

22 20. Plaintiff is a "consumer" as defined by 15 U.S.C. §1692a(3) of the FDCPA.

23 21. Defendant is a "debt collector" as defined by §1692a(6) of the FDCPA, because it regularly
24 use the mail and/or the telephone to collect, or attempt to collect, delinquent consumer accounts.
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22. Defendant identifies itself as a debt collector, and is engaged in the business of collecting or attempting to collect, directly or indirectly, defaulted debts owed or due or asserted to be owed or due to others. Defendant has been a member of the Association of Credit and Collection Professionals, an association of debt collectors, since 2007.²

23. The subject debt is a “debt” as defined by FDCPA §1692a(5) as it arises out of a transaction due or asserted to be owed or due to another for personal, family, or household purposes.

a. Violations of FDCPA §1692c

24. The FDCPA, pursuant to 15 U.S.C. §1692c(a)(2), prohibits a debt collector from “communicat[ing] with a consumer in connection with the collection of a debt if the debt collector knows the consumer is represented by an attorney...”

25. Defendant violated c(a)(2) when it placed multiple collection calls to Plaintiff’s phone after it knew that Plaintiff was represented by an attorney. Plaintiff provided Defendant with her attorney’s contact information so that it would direct its communications to her attorney. Yet, Defendant opted to ignore Plaintiff’s demands and continued placing collection calls to Plaintiff’s cellular phone.

b. Violations of FDCPA § 1692e

26. The FDCPA, pursuant to 15 U.S.C. §1692e, prohibits a debt collector from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

27. In addition, this section enumerates specific violations, such as:

“The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.” 15 U.S.C. §1692e(10).

28. Defendant violated §1692e and e(10) when it used deceptive means to collect and/or attempt to collect the subject debt. Specifically, it was deceptive for Defendant to implicitly represent that

² <https://www.acainternational.org/search#memberdirectory>

1 it could continue contacting Plaintiff after it was made aware that an attorney represented her.
2 Defendant's actions only served to worry and confuse Plaintiff.

3 **c. Violations of FDCPA § 1692f**

4 29. The FDCPA, pursuant to 15 U.S.C. §1692f, prohibits a debt collector from using "unfair or
5 unconscionable means to collect or attempt to collect any debt."

6
7 30. Defendant violated §1692f when it unfairly and unconscionably attempted to collect upon
8 the subject debt. Any reasonable fact finder will conclude that Defendant acted unfairly and
9 unconscionably by knowingly contacting a represented consumer as Defendant's actions were
10 designed to frustrate Plaintiff's goals in pursuing her rights as a consumer and debtor.

11 31. As pled in paragraphs 16 through 18, Plaintiff has been harmed and suffered damages as a
12 result of Defendant's illegal actions.

13 WHEREFORE, Plaintiff, DORIS HALL, respectfully requests that this Honorable Court enter
14 judgment in her favor as follows:
15

- 16 a. Declaring that the practices complained of herein are unlawful and violate the
17 aforementioned bodies of law;
- 18 b. Awarding Plaintiff statutory damages of \$1,000.00 as provided under 15 U.S.C.
19 §1692k(a)(2)(A);
- 20 c. Awarding Plaintiff actual damages, in an amount to be determined at trial, as provided
21 under 15 U.S.C. §1692k(a)(1);
- 22 d. Awarding Plaintiff costs and reasonable attorney fees as provided under 15 U.S.C.
23 §1692k(a)(3);
- 24 e. Enjoining Defendant from further contacting Plaintiff seeking payment of the subject
25 debt; and
- 26 f. Awarding any other relief as this Honorable Court deems just and appropriate.

27 **COUNT II – VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

28 32. Plaintiff restates and realleges paragraphs 1 through 31 as though fully set forth herein.

33. Plaintiff is a “person” as defined by Cal. Civ. Code § 1788.2(g).

34. The subject debt is a “debt” and “consumer debt” as defined by Cal. Civ. Code § 1788.2(d) and (f).

35. Defendant is a “debt collector” as defined by Cal. Civ. Code § 1788.2(c).

a. Violations of RFDCPA § 1788.10 – 1788.17

36. The RFDCPA, pursuant to Cal. Civ. Code § 1788.17 states that “Notwithstanding any other provision of this title, every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Section 1692b to 1692j, inclusive of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code.”

37. As outlined above, through their conduct in attempting to collect upon the subject consumer debt, Defendant violated 1788.17; and 15 U.S.C. §§1692c, e, and f of the FDCPA. Defendant engaged in deceptive and noncompliant conduct in its attempts to collect a debt from Plaintiff, in violation of the RFDCPA.

38. Defendant willfully and knowingly violated the RFDCPA through its egregious collection efforts. Defendant’s willful and knowing violations of the RFDCPA should trigger this Honorable Court’s ability to award Plaintiff statutory damages of up to \$1,000.00, as provided under Cal. Civ. Code § 1788.30(b).

WHEREFORE, Plaintiff, DORIS HALL, respectfully requests that this Honorable Court enter judgment in her favor as follows:

- a. Declare that the practices complained of herein are unlawful and violate the aforementioned statute;
- b. Award Plaintiff actual damages, pursuant to Cal. Civ. Code § 1788.30(a);
- c. Award Plaintiff statutory damages up to \$1,000.00, pursuant to Cal. Civ. Code § 1788.30(b);

- 1 d. Award Plaintiff costs and reasonable attorney fees as provided pursuant to Cal. Civ. Code
2 § 1788.30(c);
- 3 e. Enjoining Defendant from further contacting Plaintiff seeking payment of the subject debt;
4 and
- 5 f. Award any other relief as the Honorable Court deems just and proper.

6 Dated: January 29, 2020

Respectfully submitted,

7 Nicholas M. Wajda

8 **WAJDA LAW GROUP, APC**

9 6167 Bristol Parkway

10 Suite 200

Culver City, California 90230

11 Telephone: 310-997-0471

12 Facsimile: 866-286-8433

13 E-mail: nick@wajdalawgroup.com

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